consider, in the first place, whether there is anything in the sections themselves to render it inadmissible, and secondly, whether the terms of *proviso* 1 to section 92 are not wide enough to make it admissible under that *proviso*. When a contract has been reduced to the form of a document, section 91 excludes oral evidence of the terms of the document by requiring those terms to be proved by the document itself unless otherwise expressly provided in the Act, and section 92 excludes oral evidence for the purpose of contradicting, varying, adding to, or subtracting from such terms. Section 92 only excludes oral evidence to vary the terms of the written contract, and has no reference to the question whether the parties had agreed to contract on the terms set forth in the document. The objection must therefore be based on section 91 which only excludes oral evidence as to the terms of a written contract. Clearly under that section a defendant sued, as in the present case, upon a written contract purporting to be signed by him could not be precluded in disproof of such agreement from giving oral evidence that his signature was a forgery. In their Lordships' opinion oral evidence in disproof of the agreement (1) that as in *Pym* v. *Campbell,* 6 E. & B. 370, the signed document was not to operate as an agreement until a specified condition was fulfilled, or (2) that as in the present case, the document was never intended to operate as an agreement but was brought into existence solely for the purpose of creating evidence of some other matter stands exactly on the same footing as evidence that the defendant's signature was forged. In *Pym* v. *Campbell,* the defendants were sued upon a written contract to purchase an invention, and Lord Campbell had ruled at the trial that on the plea denying the agreement oral evidence was admissible that it had been agreed between the parties before they signed that there was to be no agreement until the invention was approved by *A*. In his judgment discharging the rule *nisi* for a new trial, Lord Campbell said:

> It was proved in the most satisfactory manner that before the paper was signed, it was explained to the plaintiff that the defendants did not intend the paper to be an agreement till *A* had been consulted and found to approve of the invention; and that the paper was signed before he was seen only because it was not convenient for the defendants to remain. The plaintiff assented to this, and received the writing on those terms. That being proved, there was no agreement.

Erle J. who gave judgment first had dealt more fully with this question:

> The point made is that there is a written agreement absolute on the face of it, and that evidence was admitted to [82] show that it was conditional; and if that had been so it would have been wrong. But I am of opinion that the evidence showed that in fact there was never any agreement at all. The production of a paper purporting to be an agreement by a party with his signature attached, affords a strong presumption that it is his written agreement; and, if in fact he did sign the paper *animo contrahendi,* the terms contained in it are conclusive and cannot be varied by parol evidence . . . . but, if it be proved that in fact the paper was signed with the express intention that it should not be an agreement, the other party cannot fix it as an agreement upon those so signing. The distinction in point of law is that evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is not an agreement at all is admissible.

The Indian legislature has thought well to give statutory effect to the decision in *Pym* v. *Campbell* in *proviso* 3 to section 92:

> The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract . . . . may be proved;

and in *Mottayappan* v. *Palani Goundan,* 38 Mad. 226 Benson and Sundara Ayyar JJ. have expressed the opinion that oral evidence to show that a document was never intended to operate according to its terms, but was brought into existence, as in the present case, solely for the purpose of creating evidence about some other matter, is admissible under *proviso* 1 to section 92, "any fact may be proved which would invalidate any document." This may well be so, but in their Lordships' opinion, even if there were no *provisoes* to either section, the result in the present case would be the same, because there is nothing in either section to exclude oral evidence that there was no agreement between the parties and therefore no contract. It was also contended that the case came within section 92, because of the provision recognising the widow's title to the jewels in her possession. The High Court have found that this provision was not intended to operate as an agreement, but was introduced to give verisimilitude to the document, it being usual to make such a provision in agreements for a widow's maintenance. Further, it was held by this Board in the passage already cited from the judgment in *Pertab Chunder Ghose* v. *Mohendra Purkait,* that if the defendants were told that any stipulation in the agreement would not be enforced, they could not be held to have assented to it. Consequently the document was not the real agreement between the parties, and the plaintiff could not sue upon it. In their Lordships' opinion both the lower Courts were right in finding on the oral evidence in this case that there was no contract, and they will humbly advise His Majesty that the appeal be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Harold Shephard; H. S. L. Polack & Co.*

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[83] STRAITS SETTLEMENTS REPORTS [83]

**PUBLISHED BY AUTHORITY**

## *Re* R. E. SMITH, DECEASED
## MUTHUCARPEN CHETTY v. BEATRICE KATE SMITH

**[O.C.J. (Shaw C.J.) May 23, 1923]**
**[Singapore Originating Summons No. 42 of 1923]**
**[C.A. (Sproule, Barrett-Lennard and Brown JJ.)]**
**[Singapore Civil Appeal No. 20 of 1923]**

*Ordinance No. 135 (Municipal), s.19(2).*

Money received by the administratrix of a deceased Municipal officer out of the Municipal provident fund is subject to payment of the debts of the deceased.

ADJOURNED ORIGINATING MOTION.

The facts and arguments sufficiently appear from the judgment.

*Da Silva* for the plaintiff.

*Zehnder* for the defendant.

*Cur. Adv. Vult.*

**Shaw C.J.:** This is an application to the Court under section 68 of the Civil Procedure Code to determine the question whether a certain sum of money received by the administratrix of the estate of the deceaesd from the trustees of the Municipal Provident Fund is subject to the payment of the debts of the deceased.

It is provided by section 19(2) of Ordinance No. 135 (Municipal) as follows:—

"No payments or other allowance on death, superannuation, resignation, retirement or discharge made or granted to persons out of a superannuation and provident fund nor the rights of any contributor acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever."

It has been held in England in the somewhat analogous cases of pensions of officers and civil service officials that the money, when actually received, is liable for the debts of the person receiving it and its property passing to the trustee in the case of a bankruptcy. (See *Jones* v. *Coventry*, [1909] 2 K.B. 1029; *Re Huggins*, 21 Ch. D. 85).

It was argued however by Mr. Zehnder on behalf of the administratrix that the provision contained in section 19 of the Municipal Ordinance is more extensive than the provisions of the enactments that have been the subject of the English decisions which only prohibit assignment, etc., of the pension or allowance, in that the Ordinance provides that "no payments . . . shall be . . . . liable to be attached, sequestered or levied upon in respect of any debt or claim whatsoever" and that the effect of this provision is that although the money has actually been received by the officer or his estate it is nevertheless not liable for the payment of his debts. In effect, the argument must amount to this that the property of the officer during his lifetime and his estate after his death is free from liability for his debts up to the amount received from the Fund.

This is somewhat startling contention and would amount to an infringement of the ordinary rights of creditors. Such a construction ought not to be deduced from the wording of the Ordinance unless the wording is unambiguous to that effect.

In my opinion it is not.

To read the section in the manner suggested it is necessary to read the words "no payments" in the section as meaning "no sums of money received by an officer or by his estate" and even if one so read it, it would be useless for the purpose that it is contended that the section is intended to affect and would indeed be meaningless because a creditor does not, when he takes out execution, levy on any particular sum of money for a debt but levies against the property of the debtor or his estate generally.

This is a somewhat startling contention and would not to be assigned or levied upon under the Ordinance are in my opinion the amounts the officer or his estate is entitled to receive from the trustees of the Provident Fund up to the time the moneys are paid over to the officer or his estate and all that the Ordinance can properly be construed as effecting is the same as the English provisions, construed in the cases I have referred to, namely to prevent the money to which the officer or his estate is entitled being assigned by him or attached or levied upon before it comes into his possession.

I therefore hold that the money received by the administratrix is subject like any other part of the intestate's estate for the payment of his debts.

The costs of all parties to this summons should be paid out of the estate.

*Order accordingly.*

From this judgment the defendant appealed to the Court of Appeal.

**Sproule, Barrett-Lennard** and **Brown JJ.** delivered oral judgments unanimously dismissing the appeal.

Solicitors: *Claude da Silva; Zehnder Bros.*

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## REX v. TAN AH KOW

**[O. Cr. J. (Terrell J.) January 7, 1936]**

**[Singapore First Assize Case No. 11 of 1936]**

*Criminal Law — Penal Code, s.366 — Kidnapping in order that a girl may be seduced to illicit intercourse — Meaning of "seduce" and "illicit intercourse."*

A girl may be seduced to illicit intercourse within the meaning of section 366 of the Penal Code although [84] she is not thereby surrendering her chastity for the first time. [84]

Illicit intercourse does not necessarily mean punishable carnal knowledge but includes any intercourse out of lawful wedlock.

TRIAL BY JURY.

*Walters* for the Crown.

The accused was not legally represented.

The accused, Tan Ah Kow was tried at the Singapore Assizes on a charge of kidnapping a girl in order that she might be seduced to illicit intercourse. The girl was of the age of 14 years (about) and during the trial it appeared that she had parted with her virginity prior to being kidnapped and a question arose whether section 366 of the Penal Code was applicable in such a case.

"Seduced" in section 366 is used in opposition to the word "forced" and indicates a method of manner of procuring a person to illicit intercourse. Accordingly "seduced" in this context does not signify or imply the first surrender of chastity.

It would be contrary to the reason of the section to hold that a man who kidnapped a girl of 15 years 11 months and induced her to surrender her chastity for the first time was punishable under section 366, but that in no circumstances could a man who kidnapped a young girl of 12 and persuaded her to illicit intercourse be so punished merely because on one previous occasion she had surrendered her chastity to someone else.

The reasoning in the case of *R.* v. *Moon* [1910] 1 K.B. 818 has no application.

According to the *Shorter Oxford* English Dictionary, Vol. 2 at p. 1829, "seduce" means to induce a woman or girl to surrender her chastity. In Vol. 1 at p. 295 "chaste" is defined not only as pure from un-